



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**VWP Individual Permit Number 02-0753**

**Effective Date: July 1, 2003**

**Major Modification Date: October 4, 2007**

**Expiration Date: June 30, 2018**

### **VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT**

Based upon an examination of the information submitted by the owner and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.


**Permittee:** Spring Creek Land Development, LLC/ Crossroads Land and Development, LLC

**Address:** P.O. Box 48, Keswick, Virginia 22947

**Activity Location:** The project is located on the northwest quadrant of the Interstate 64 and Route 15 interchange near Zion Crossroads, within Louisa County, Virginia.

**Activity Description:** The permittee proposes to develop a 981-acre, multi-use golf community, known as "Spring Creek," incorporating retail shopping centers, corporate office facilities, and a residential development surrounding an 18-hole championship golf course. The proposed activity results in the permanent impact of no more than 5.00 acres of surface waters, including 4.27 acres of palustrine forested (PFO) wetlands (2.91 acres of permanent impacts and 1.36 acres of conversion impacts from PFO wetlands to palustrine emergent (PEM) wetlands), 1,395 linear feet (0.42 acre) of perennial stream (Spring Branch), and 2,402 linear feet (0.31 acre) of intermittent streams channels. Permanent PFO wetland impacts will be compensated through the following: on-site preservation of 45.82 acres PFO wetlands; off-site creation and enhancement of PFO wetlands at the Reynolds Property; and, the purchase of 0.28 credit from the York River Wetland Mitigation Bank in King William County, Virginia. Impacts will be compensated off-site at the Reynolds Property at a 1.2:1 replacement to loss ratio for permanent PFO wetlands (3.67 acres created and 0.99 acre enhanced). Permanent stream impacts will be compensated through the following: on-site preservation of 17,646 linear feet (171 acres) of riparian buffers; a contribution of \$75,600.00 to the Virginia Aquatic Resources Trust Fund; and, off-site through 612 linear feet of streambank stabilization and 3,539 linear feet (7.28 acres) of riparian buffer restoration/preservation at the Reynolds Property.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.

  
Thomas A. Faha, Department of Environmental Quality

10/4/07  
Date

**Part I - Special Conditions****A. Authorized Activities**

1. This permit authorizes the permanent fill of no more than 5.00 acres of surface waters, including 4.27 acres of palustrine forested (PFO) wetlands (2.91 acres of permanent impacts and 1.36 acres of conversion impacts from PFO wetlands to palustrine emergent (PEM) wetlands), 1,395 linear feet (0.42 acre) of perennial stream channels (Spring Branch), and 2,402 linear feet (0.31 acre) of intermittent stream channels, as indicated in the Joint Permit Application dated April 23, 2002, received on April 24, 2002; additional information dated May 10, 2002, June 7, 2002, August 19, 2002, August 30, 2002, September 18, 2002, September 20, 2002, and November 12, 2002, and major modification request submittals and e-mails dated February 7, 2006, August 3, 2006, November 1, 2006, January 3, 2007, January 9, 2007, and March 21, 2007 and any other DEQ approved submittals.
2. The project activities, including any conditions and limitations, shall be adhered to as described in the Joint Permit Application and any supplemental materials approved by DEQ.
3. The permittee shall notify the DEQ-NVRO of any additional impacts to surface waters, including wetlands or any change to the type of wetland impacts, associated with this project. Any additional impacts to surface waters, including wetlands, or any change to the type of wetland impacts, shall be subject to individual permit review or modification of this permit, and compensation may be required.
4. This permit is valid for **15 years** from the date of issuance. Reissuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensation provisions) has not been completed. The original permit term and extension cannot exceed the maximum of 15 years.

**B. Standard Project Conditions**

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams shall be installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.
3. All excavation, dredging, and/or filling in stream channels shall be accomplished in the dry.

4. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
5. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be stabilized within 30 days of completing work, restored to pre-construction conditions, and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to pre-existing contours.
6. Heavy equipment in temporarily impacted surface waters shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical. Mats shall be removed as soon as the work is complete.
7. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into surface waters, managed such that leachate does not enter surface waters, and entirely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.
8. All non-impacted surface waters within the project or right-of-way limits that are within 50 feet of any project activities shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that these marked areas are surface waters where no activities are to occur.
9. Erosion and sedimentation controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to surface waters. These controls shall remain in place until the area stabilizes.
10. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
11. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.
12. All construction, construction access (for example, cofferdams, sheetpiling, and causeways), and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.

13. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
14. Wet or uncured concrete shall be prohibited from entry into surface waters.
15. No machinery may enter surface waters, unless authorized by this permit.
16. In issuing this permit, DEQ has not taken into consideration the structural stability of any proposed structure.

**C. Construction Monitoring**

A photo station shall be established at each impact site authorized by this permit. The photograph orientation at each station shall remain constant during all monitoring events. The photographs shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; flagged non-impact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. Photographs shall be taken prior to site activities, at the end of each quarter, and within one week of construction completion. Quarterly photographs at an individual impact site shall not be required until construction activities are initiated at that site. Quarterly photographs at an individual impact site shall not be required following completion of construction at that impact site and the site is stabilized. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

**D. Required Notifications and Submittals**

1. All written communications required by this permit shall be submitted to the DEQ-NVRO. The permit number shall be included on all correspondence.
2. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.

3. All submittals required by this permit shall contain the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

4. Any fish kills or spills of fuels or oils shall be reported immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, DEQ shall be notified at (703) 583-3800; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
5. Violations of Virginia Water Quality Standards shall be reported within 24 hours to DEQ at (703) 583-3800.
6. DEQ shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
7. Final Plans and Specifications for activities authorized by this permit shall be submitted prior to the beginning of each construction component. Construction shall be performed in accordance with the submitted Plans and Specifications. Any changes to the final construction plans in permitted areas shall be submitted to DEQ prior to construction activities.

#### Impoundment

8. The flow of water released from the irrigation impoundment located on Spring Branch shall equal or exceed 30 percent of the mean annual flow or the estimated inflow to the pond, whichever of these two flow rates is less. Seepage from the dam may be counted towards this minimum release value. Within **180 days** of the permit's effective date or prior to the beginning of the dam construction, which ever comes first, the permittee shall provide the following to DEQ-NVRO for review and approval:
  - a. The established flow rate (in gallons per minute or cubic feet per second) equivalent to 30 percent of the mean annual flow of Spring Branch;

- b. If inflow falls below 30 percent of the mean annual flow, a description of how estimated inflows are to be determined. The permittee may either use surrogate gages or attempt to measure actual inflow; and
- c. A description of how the permittee proposes to demonstrate compliance with this condition.

#### Construction

- 9. DEQ shall be notified in writing at least **ten (10) days** prior to the initiation of construction activities authorized under this permit so that inspections of the project can be planned, if deemed necessary. The notification shall include identification of the impact areas at which work will occur and a projected schedule for completing work at each permitted impact area.
- 10. Construction monitoring reports shall be submitted to DEQ semiannually by the last day of April and October, for the life of the permit or until construction activities are complete to document the progress of construction activities. The reports shall include, as appropriate, the following:
  - a. A written narrative stating what work was performed, a description of the work performed at each impact area, when the work was initiated, and expected date of completion; a summary of activities conducted to comply with the permit conditions; a summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions; a summary of anticipated work to be completed during the next reporting period; and an estimated date of project completion.
  - b. A labeled site map depicting all impact areas and photo stations.
  - c. Properly labeled photographs as described in Part I Section C.
- 11. Written notification and photographs shall be submitted within **30 days** of restoration demonstrating that all temporarily disturbed wetland areas have been restored in compliance with the permit conditions.
- 12. DEQ shall be notified in writing within **30 days** following the completion of all activities in permitted impact areas authorized under this permit.

#### Compensation

- 13. The permittee shall submit a final wetland compensation plan, which includes (at a minimum): the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland type; discussion of buffers; discussion of structures and features necessary for the success of the site; the schedule for compensation site construction; a location map, including latitude and longitude (to the nearest second) at the center of the site; a hydrologic analysis, including a water budget (non-tidal sites only) based on expected monthly inputs and outputs which

will project water level elevations for a typical year, a dry year and a wet year; groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; wetland delineation confirmation and data sheets and maps for existing wetland areas on the proposed sites; a grading plan; a planting scheme and schedule, including suggested plant species, zonation, and acreage of each vegetation type proposed; a soil preparation and amendment plan addressing both topsoil and subsoil conditions; design of water control structures; site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo stations, monitoring wells, soil sampling points (as appropriate), and vegetation sampling points, and reference wetlands (if available); an abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control; and an erosion and sedimentation control plan.

14. Documentation that the 0.28 wetland mitigation credit have been purchased from the York River Wetland Mitigation Bank in King William County, Virginia shall be submitted to and received by DEQ-NVRO prior to initiating work at Impact Numbers R-8, R-14, and R-23. The location and dimension of the impact areas is identified in the submittal dated November 1, 2006 and received at DEQ on November 3, 2006.
15. The permittee shall submit a final stream compensation plan, which includes (at a minimum): the goals and objectives of the plan, in terms of replacement of functions and values and expressed in linear feet; a detailed description of the streambank stabilization activities (e.g., type of vane, root wad, or other instream structure, location); riparian buffer plantings (e.g., scheme, species, width); structures and features necessary for the success of the site; the schedule for compensation site construction; a location map, including latitude and longitude (to the nearest second) at the center of the site; site access plan; a monitoring plan, including proposed success criteria for streambank stabilization and riparian buffer success, monitoring goals which shall include, at a minimum, physical stream measurements and surveys to determine stability of the stream, benthic macroinvertebrate sampling and indices allowing comparison from year to year, riparian habitat assessment following scientifically based protocol, and the location of photo stations, vegetation sampling points, survey points, and reference streams (if available); an abatement and control plan for undesirable plant species, including, at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control; an erosion and sedimentation control plan; and livestock access limiting measures.
16. Documentation that the contribution of \$75,600.00 has been received by the Virginia Aquatic Resources Trust Fund shall be submitted to and received by DEQ-NVRO prior to initiating work in Impact Number R-23. The location and dimension of the Impact Number R-23 is identified in the submittal dated November 1, 2006 and received at DEQ on November 3, 2006.
17. The final wetland and stream compensation plans shall include protection of surface waters (including compensation areas and non-impacted surface waters within the project boundary) in perpetuity. These areas shall be surveyed or platted within **120 days** of final plan approval, and the

survey or plat shall be recorded in accordance with the requirements of this section. The restrictions, protections, or preservations, or similar instrument shall state that no activity will be performed on the property in any area designated as a compensation area or non-impacted surface water, with the exception of maintenance or corrective action measures authorized by DEQ. Unless specifically authorized by DEQ through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, this restriction applies to ditching, land clearing or the filling, dumping, excavating, draining, flooding, or impounding. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property. Proof of recordation shall be submitted within **60 days** of survey or plat approval. This requirement is to preserve the integrity of compensation areas and to ensure that additional impacts to surface waters do not occur.

18. DEQ shall be notified in writing at least **ten (10) days** prior to the initiation of activities at the compensation sites. The notification shall include a projected schedule of activities and construction completion.
19. All wetland compensation monitoring reports shall be submitted by November 30<sup>th</sup> of the monitoring year. The reports shall include, at a minimum, the following:
  - a. A general description of the site including a site location map identifying photo stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones;
  - b. Summary of activities completed during the monitoring year;
  - c. Description of monitoring methods;
  - d. An analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas set forth in the final compensation plan;
  - e. Evaluation of hydric soils or soils under hydric conditions;
  - f. An analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan;
  - g. Properly labeled photographs as described in Part I Section C;
  - h. Discussion of wildlife or signs of wildlife observed at the compensation site;
  - i. Comparison of site conditions from the previous monitoring year and/or reference site;
  - j. Discussion of corrective measures or maintenance activities to control undesirable species, to repair any damaged water control device, or to replace any damaged planted vegetation.



20. Documentation of the total wetland acreage by wetland type based on the surveyed boundary shall be submitted within **30 days** of the final monitoring event.
21. All stream compensation monitoring reports shall be submitted by November 30<sup>th</sup> of the monitoring year. The reports shall include, at a minimum, the following:
  - a. A general description of the site including a site location map identifying photo stations and monitoring stations;
  - b. Summary of activities completed during the monitoring year;
  - c. Description of monitoring methods;
  - d. Discussion of the physical stream measurements to determine streambank stability;
  - e. Discussion of the macroinvertebrate sampling data;
  - f. Discussion of the riparian habitat observation data;
  - g. Discussion of the establishment of vegetation;
  - h. Discussion of stream bank and/or channel stabilization;
  - i. Properly labeled photographs as described in Part I Section C;
  - j. Discussion of wildlife or signs of wildlife observed at the compensation site;
  - k. Comparison of site conditions from the previous monitoring year and/or reference site;
  - l. Discussion of alterations, maintenance, and corrective actions conducted at the stream compensation site.

**E. Road Crossings**

1. Access roads shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable and to follow as near as possible pre-construction contours and elevations. Access roads constructed above pre-construction contours and elevations in surface waters shall be properly bridged or culverted to maintain surface flows.
2. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel. For multiple-celled culverts, only those cells situated within the limits of ordinary high water shall be countersunk. Countersinking is not required for existing pipes or culverts that are being maintained or extended.

3. Installation of pipes and road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions or other similar structures.
4. All surface waters temporarily affected by a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.
5. Stream bottom elevations at road crossings shall be measured at the inlet and outlet of the proposed structure and recorded prior to construction and within one week after the completion of construction to ensure that the design elevations were met.

**F. Utilities**

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area, and each area shall be returned to its original contours and stabilized within 30 days of completing work in said area, unless otherwise authorized by this permit.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (for example, backfilling with extensive gravel layers creating a French drain effect).

**G. Golf Courses**

1. A buffer zone of at least 50 feet shall be established from the boundaries of surface waters, including preserved and compensation wetlands, naturally occurring and man-made ponds, and perennial and intermittent streams. The application of fertilizers, herbicides, insecticides, fungicides, and other pesticides shall be prohibited within this buffer.
2. All clearing in preserved wetlands to accommodate golf course flight paths shall be performed by hand or hand-held machine. Land disturbing activities in these areas shall be prohibited. Stumps may be ground by rubber-tired grinders placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical.
3. A Nutrient and Integrated Pest Management Plan approved by DCR shall be implemented.
4. If total groundwater and surface water withdrawals exceed 10,000 gallons per day on average in any month, the permittee shall report the withdrawals to DEQ by January 31<sup>st</sup> of the following year (in accordance with 9 VAC 25-200-10 et seq.). Reporting shall follow the notification provisions of Part I Section D.

**H. Impoundment Construction**

1. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.

**I. Stormwater Management Facilities**

1. Stormwater management facilities shall be designed in accordance with best management practices and watershed protection techniques (as per the Dept. of Conservation and Recreation's Stormwater Management Handbook, First Edition, 1991), such as vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality, and minimize adverse effects to aquatic resources, that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.
2. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.
3. Maintenance excavation shall follow the approved maintenance plan authorized by this permit, and shall not exceed the original contours of the facility. A complete stormwater facility management plan shall be submitted to the DEQ-NVRO for each stormwater management facility authorized by this permit. Maintenance excavation shall follow the approved maintenance plan, and shall not exceed the original contours of the facility as constructed.
4. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.
5. Maintenance within stormwater management facilities will not require compensation provided that the maintenance is accomplished in designated maintenance areas as indicated in the facility maintenance plan.
6. Draining of a pond shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

**J. Compensation On Site and Off Site****General Compensation Requirements**

1. The final compensation plan shall be approved by DEQ prior to any construction activity in permitted impact areas. The final compensation plan as approved by DEQ shall be an enforceable requirement of this permit. Any deviation from the approved plan must be submitted to and approved in advance of implementation by DEQ.
2. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final compensation plan.
4. Rooted seedlings or cuttings shall originate from a local nursery or be adapted to local conditions. Vegetation shall be native species common to the area, shall be suitable for growth in local wetland conditions, and shall be from areas within approximately 200 miles from the project site.
5. Undesirable plant species shall be identified and controlled as described in the abatement and control plan for undesirable plant species, such that they are not dominant species or do not change the desired community structure. The abatement and control plan shall include procedures to notify DEQ of any undesirable plant species occurrences, methods of removal, and successful control.
6. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by DEQ. All vegetation removal shall be done by manual means, unless authorized by DEQ in advance.
7. For compensation sites involving land disturbance, a site stabilization plan shall be submitted to the DEQ-NVRO at least **60 days** prior to compensatory mitigation construction activities.
8. Point sources of stormwater runoff shall be prohibited from entering any compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, and forebays.
9. If the compensation area fails to be established as per the specified performance criteria, the reasons for this failure shall be determined and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. Shall significant changes be necessary to ensure success, the monitoring plan shall begin again, with monitoring year one being the year changes are complete.

**Wetland Compensation**

10. The permittee shall compensate for impacts to 0.14 acre of PFO wetlands associated with Impact Numbers R-8, R-14, and R-23 through the purchase of 0.28 wetland mitigation credit from the York River Wetland Mitigation Bank in King William County, Virginia.

11. The permittee shall compensate for the impacts to 4.13 acres of PFO wetlands (2.77 acres of permanent impacts and 1.36 acres of conversion impacts from PFO to PEM) on-site by the preservation of 45.82 acres of PFO wetlands and off-site, at the Reynolds Property, by the creation of 3.67 acres of PFO wetlands and 0.99 acre of wetland enhancement. The Reynolds Property is located approximately two (2) miles downstream of the project site near Poindexter, Virginia. The property is bordered by state Routes 640 and 617 to the east and north, respectively, and Wheeler Creek to the south. The compensation sites shall be preserved in perpetuity.
12. Wetland hydrology shall be considered established if depths to the seasonal high water table are equal to or less than 12 inches below ground surface for at least 12.5% of the growing season (28 days), as defined in the United States Department of Agriculture soil survey for the locality of the compensation site in all monitoring years under normal rainfall conditions, as defined in the water budget (non-tidal sites only) of the final compensation plan.
13. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.
14. The wetland plant community shall be considered established according to the performance criteria specified in the final compensation plan and approved by DEQ. Species composition shall reflect the desired plant community types stated in the final compensation plan by the end of the first growing season and shall be maintained through the last monitoring year. Species composition shall consist of greater than 50% facultative (FAC) or wetter (FACW or OBL) vegetation, as expressed by total number of individual plants for woody species and percent areal cover for herbaceous vegetation.
15. A post-grading survey, including spot elevations, of the site shall be required and shall be conducted by a licensed land surveyor or a professional engineer. Post-grading elevations for the compensation site shall be sufficient to ensure that wetland hydrology will be achieved on the site to support the goals and objectives of the compensation plan.
16. Compensation site monitoring for hydrology, soils, and hydrophytic vegetation shall begin at the first complete growing season (monitoring year one) following compensation site construction. Monitoring shall be required for monitoring years 1, 2, 3, 5, and 7. If all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied (i.e., that corrective actions were successful).
17. Photographs shall be taken at the compensation site from the permanent photo stations identified in the final compensation plan. At each station, four photographs shall be taken in the direction of the major compass points. These photographs shall be taken after the initial planting and in August or September every monitoring year. Photographs shall be appropriately labeled as described in Part I Section C.
18. The establishment of wetland hydrology shall be measured during the growing season, with the

location and number of monitoring wells, and frequency of monitoring for each site, in accordance with the final compensation plan. All hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following DEQ approval.

19. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August or September during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.
20. During each monitoring event, the permittee shall document all wildlife or signs of wildlife observed at the site.
21. The wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data. Calculation of total wetland acreage by wetland type shall be based on that boundary at the end of the monitoring cycle and shall be shown on the site plan. Data shall be submitted within 30 days of the final monitoring event.

#### Stream Compensation

22. The permittee shall compensate for impacts to 154 linear feet (0.02 acre) of intermittent stream channel associated with Impact Number R-23 through a contribution of \$75,600.00 to the Virginia Aquatic Resources Trust Fund.
23. The permittee shall compensate for impacts to 1,241 linear feet (0.40 acre) of perennial stream (Spring Branch) and 2,402 linear feet (0.31 acre) of intermittent streams to Spring Branch on-site by 17,646 linear feet (171 acres) of riparian buffer preservation and off-site at the Reynolds Property by 612 linear feet of streambank stabilization and 3,539 linear feet (7.28 acres) of riparian buffer restoration/preservation. The compensation sites shall be preserved in perpetuity.
24. The success of the stream restoration shall be based on streambank stabilization and riparian vegetation in accordance with the success criteria included in the approved final compensation plan.
25. Monitoring shall be required for monitoring years 1, 2, 3, 5, and 7 once stream compensation construction activities have been completed. If the stream is found to be unstable or the riparian vegetation planting is not successful in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied (i.e., that corrective actions were successful).
26. Monitoring shall be required following major storm events that result in significant changes in the stream profile. The report shall be submitted within 60 days from the date of the storm event.

27. Photographs shall be taken at the compensation site from the permanent photo stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events, and at least one upstream and one downstream view shall be taken. Photographs shall be taken prior to site construction activities, during instream and riparian construction activities, within one week of completion of activities, following each major storm event, and in August or September of each monitoring year. Photographs shall be appropriately labeled as described in Part I Section C.
28. Macroinvertebrate monitoring shall be conducted each monitoring year using a scientifically based protocol as detailed in the final compensation plan.
29. Riparian habitat assessment shall be conducted each monitoring year using a scientifically based protocol as detailed in the final compensation plan.
30. The permittee shall document all wildlife or signs of wildlife observed at the site during each monitoring event.
31. The permittee shall have the authority to use heavy equipment within the stream channel during restoration activities when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible. All heavy equipment shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable. Mats shall be removed as soon as the work is complete.
32. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation construction shall be completed in the dry whenever practicable.
33. Bank slopes shall be flattened to reduce stream bank erosion, where practical.
34. Riparian buffer restoration shall include the planting of a variety of native species currently growing in the site area, as indicated in the final compensation plan. Appropriate wetland seed mixture shall be utilized in restored areas.
35. If the stream restoration fails, the reasons for this failure shall be determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ for approval prior to or with the next required monitoring report. All problems shall be corrected by the permittee. If significant changes are necessary to stabilize the stream, the monitoring plan shall begin again, with year one being the monitoring year changes are complete.

**K. Water Withdrawals**

If the average daily withdrawal during any single month exceeds 10,000 gallons per day, the water withdrawals shall be reported to DEQ by January 31st of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and

address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement. For permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations, the annual reports to DEQ may include, as an alternative, the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH that contain the monthly withdrawal data.



## **Part II – General Conditions**

### **A. Duty to Comply**

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

### **B. Duty to Cease or Confine Activity**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

### **C. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit that may have a reasonable likelihood of adversely affecting human health or the environment.

### **D. VWP Permit Action**

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

**E. Inspection and Entry**

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

**F. Duty to Provide Information**

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

**G. Monitoring and Records Requirements**

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
  - a. The date, exact place and time of sampling or measurements;
  - b. The name(s) of the individual(s) who performed the sampling or measurements;
  - c. The date and time the analyses were performed;

- d. The name(s) of the individual(s) who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

#### **H. Transferability**

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

- 1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
- 2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
- 3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

#### **I. Property rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

#### **J. Reopener**

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

**K. Compliance with State and Federal Law**

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

**L. Severability**

The provisions of this VWP permit are severable.

**M. Permit Modification**

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

**N. Permit Termination**

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

**O. Civil and Criminal Liability**

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

**P. Oil and Hazardous Substance Liability**

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

**Q. Unauthorized Discharge of Pollutants**

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.
4. On or after October 1, 2001 conduct the following activities in a wetland:
  - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
  - b. Filling or dumping;
  - c. Permanent flooding or impounding; or

- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

**R. Permit Extension**

1. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.